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TOWN OF UNDERHILL
APPLICATION OF
RICHARD BOUFFARD AND RMB CONSTRUCTION INC/DARCY AND MARY SPENCE
FOR A 2-LOT SUBDIVISION
PRELIMINARY FINDINGS AND DECISION

In re: Richard Bouffard and RMB Construction Inc./Darcy & Mary Spence, and
10 & 12 Bridle Trail
Underhill, VT 05489

Docket No. DRB-13-06: Bouffard/Spence

I. **INTRODUCTION AND PROCEDURAL HISTORY**

This proceeding concerns the Bouffard/Spence preliminary hearing application for a 2-lot subdivision of property located at 10 & 12 Bridle Trail in Underhill, VT.

- A. On May 10, 2013, the Applicants filed an application for subdivision for the project. A sketch plan review of the project was held on June 3, 2013 and was accepted.
- B. Application for Preliminary Approval was made on October 8, 2013. At that time a site visit was scheduled for November 16, 2013 and a hearing was scheduled for November 18, 2013. On October 31, 2013, a copy of the notice of preliminary hearing was mailed via Certified Mail to the following owners of properties adjoining the property subject to the application:
1. Miller, 18 Bridle Trail, Underhill, VT 05489
 2. Sowers/Haas, 24 Bridle Trail, Underhill, VT 05489
 3. Gustavsen, 99 Poker Hill Rd., Underhill, VT 05489
 4. Longley, 91 Poker Hill Rd., Underhill, VT 05489
 5. Nadeau, 88 Poker Hill Rd., Underhill, VT 05489
 6. Hood/Kapusta, 3 Blakely Rd., Underhill, VT 05489
 7. Monk, 96 Autumn Ln., Bristol, VT 05443 (PH077)
 8. Macone/Drucker, 31 Poker Hill Rd., Underhill, VT 05489
- C. On October 31, 2013, notice of the public hearing for the proposed Bouffard subdivision was posted at the following places:
1. The Underhill Town Clerk's office;
 2. The Underhill Country Store;
 3. Wells Corner Market;
 4. The Underhill Center Post Office;
 5. The Underhill Flats Post Office;
 6. Jacobs IGA;

- D. On November 1, 2013, notice of the public hearing was published in *The Burlington Free Press*.
- E. The site visit was held on November 16, 2013 at 8:30am. The preliminary hearing began at 6:30 PM on November 18, 2013. The Bouffard/Spence application was the first (1st) item on the agenda.
- F. Present at the preliminary hearing were the following members of the Development Review Board: Charles Van Winkle, Shani Bartlett, Matt Chapek, Karen McKnight, Will Towle and Helen Wagner, DRB member Penny Miller recused herself as an abutting property owner and sat in the audience.
- G. At the outset of the hearing, Chairperson Charles Van Winkle explained the criteria under 24 V.S.A. § 4465 (b) for being considered an "interested party." Acting Administrative Officer Brian Bigelow; Applicant Dick Bouffard and consultant Dexter Lefavour, P.E, and abutters Penny Miller and Peter Macone testified at the hearing.
- H. During the course of the hearing the following exhibits were submitted to the Development Review Board:
1. A staff report sent by Acting Administrative Officer Brian Bigelow to the Development Review Board, the Applicants, the Selectboard, the Underhill Jericho Fire Department, and the Conservation Commission Chair;
 2. Bouffard/Spence's Application for Subdivision: Preliminary (dated 10-8-13);
 3. A copy of the plans prepared by Lefavour P.C. Engineering & Environmental Services, (Project #829: Sheet C-1) dated July 2013;
 4. A copy of a map created using the Vermont Agency of Natural Resources Atlas
 5. A copy of a portion of the Vermont Agency of Transportation Standard B-71 'Standards for Residential and Commercial Drives';
 6. A copy of the tax map & zoning map for BT010 & BT012;
 7. A copy of the minutes from the 6-3-13 Sketch Plan meeting;
 8. A copy of the hearing notice published in *The Burlington Free Press* on 11-1-13;
 9. copy of the Findings Checklist;
 10. A copy of the draft Private Road Agreement submitted by the Applicants;
 11. A copy of the review letter from Harry Schoppmann III, Duty Captain, Underhill-Jericho Fire Department dated October 29, 2013;
 12. A copy of the review letter from John R. Alberghini, Superintendent, Chittenden County East Supervisory Union, dated October 25, 2013.

These exhibits are available in the Bouffard/Spence, BT012 & BT010, subdivision file at the Underhill Zoning & Planning Office.

III. CONCLUSIONS

Applicable Regulation Standards

Article II, Section 2.2 – Boundary Interpretation

The Board finds that Section 2.2(E) describes how to interpret the regulations when a lot proposed for development includes portions in different districts. While this proposal does not include a request for development per se, but rather a subdivision of acreage, it would be logical to review this section in regulating this proposal as the ultimate intent is the same. In other words, if this lot were already legally subdivided, a new single family house could be built where it is today as it meets the requirements of Section 2.2(E)(1)&(2).

Article II, Table 2.3, Rural Residential District

The Board finds that the application meets all of the applicable dimensional standards of this zoning district. The existing garage on Lot 1 is 40' from the proposed property line, and therefore meets the accessory structure side setback of 20'. See Conclusions for Section 3.7.

Article II, Table 2.6, Soil & Water Conservation District

The Board makes the following findings on the application as proposed:

- A. Lot 2 is proposed to be 5.5 acres with approximately 4 acres in the Rural Residential zoning district and 1.5 acres in the Soil & Water Conservation District. While the proposed Lot 2 does not meet the minimum lot size and frontage of the Soil & Water Conservation District, the existing single family dwelling on Lot 2 is located entirely within the Rural Residential zoning district and Lot 2 meets all of the dimensional requirements of that district in accordance with Article II, Section 2.2(E)(1)&(2) and Table 2.3 Rural Residential District.
- B. The Board finds that the purpose of the Soil & Water Conservation District is to “protect Underhill’s more remote and inaccessible forested upland areas from fragmentation, development, and undue environmental disturbance, while allowing for the continuation of traditional uses such as forestry, outdoor recreation, and compatible development”. This proposed subdivision, which does not include any further development, is not going to undermine the purpose of this zoning district.
- C. In accordance with Section 8.2(D) subdivisions shall conform to clearly stated policies and objectives in the Underhill Town Plan.
- D. Taking Conclusions A - C above into consideration, the proposed subdivision is the best fix to this pre-existing situation.

II. FINDINGS

Factual Findings

Based on the application, testimony, exhibits, and other evidence, the Development Review Board makes the following findings:

- A. The Applicants seek a permit to subdivide land. The subject property is a ±9.8-acre parcel located at 10 & 12 Bridle Trail in Underhill, VT (BT012 & BT010). Single family dwellings already exist on both proposed lots and no new development is proposed.
- B. The property is located in the Rural Residential zoning district and the Soil & Water Conservation zoning district as defined in Article II, Table 2.3 and 2.6 of the 2012 Unified Land Use and Development Regulations.
- C. Subdivision approval is requested for the project pursuant to review under the following sections of the 2012 Unified Land Use and Development Regulations:
 - Article II, Section 2.2 – Boundary Interpretation
 - Article II, Table 2.3 – Rural Residential District
 - Article II, Table 2.6 - Soil & Water Conservation District
 - Section 3.2 – Access
 - Section 3.7 – Lot, Yard & Setback Requirements
 - Section 3.13 – Parking, Loading & Service Areas
 - Section 3.17 - Source Protection Areas
 - Section 3.19 – Surface Waters & Wetlands
 - Section 3.22 – Water Supply & Wastewater Systems
 - Section 7.2 – Applicability
 - Section 7.5 – Preliminary Subdivision Review
 - Article VIII – All
- D. Abutter Penny Miller and Applicant Bouffard provided testimony at the hearing regarding potential designations for the rear portion of land associated with 12 Bridle Trail, roughly the portion of land within the Soil and Water Conservation District as a no build/no cut natural area.
- E. Abutters Penny Miller, Peter Macone and Applicant Bouffard provided testimony regarding what may or may not exist in terms of a Road Agreement for Bridle Trail.

Section 3.2, Access

The Board makes the following findings on the application as proposed:

- E. Access for the subdivision is proposed along Bridle Trail, a private right-of-way or easement approximately 45' to 50' wide as it fronts proposed Lots 1 and 2. This meets the minimum required width of 20' as required in Section 3.2(A).
- F. The proposed Lots 1 and 2 have adequate frontage on Bridle Trail in accordance with Section 3.2(A)(1).
- G. No changes to the access are proposed.
- H. The proposed subdivision as reviewed by Harry Schoppmann of the Underhill Jericho Fire Department.
- I. Bridle Trail is a private road serving 4 lots therefore Section 3.2(D)(10) is applicable. These requirements will be discussed further under Section 8.6 below.
- J. No Class IV road accesses are proposed with the subdivision [Section 3.2(D)(11)].

Section 3.7, Lot, Yard & Setback Requirements

The Board makes the following findings on the application as proposed:

- K. Currently, two principal structures exist on one lot; this proposal will bring this property into compliance with Section 3.7(A) which only allows one principal structure per lot.
- L. Section 3.7(B) states "no building lot shall be so reduced in area that it cannot meet area, yard, setback, frontage, coverage and other dimensional requirements for the district in which it is located...". The intent of this section is to prevent new lots that are too small to be developed – however, both of the proposed lots are already developed. Further, the two proposed lots meet the dimensional requirements of the district in which they are located.
- M. The proposed lots meet the frontage requirements of the Rural Residential zoning district on the private development road [Section 3.7(C)].
- N. The proposed Lot 1 meets the frontage requirements of both Poker Hill Road and Bridle Trail in accordance with the corner lot provisions of Section 3.7(D).

- O. The applicant proposes and shall deed restrict the triangular area roughly analogous to the to the portion of the lot within the Soil & Water Conservation District be identified as an are not to be disturbed and left in its' natural state.
- P. Section 3.7(E) allows for dimensional requirement waivers under certain circumstances. This proposal does not qualify for a waiver under the circumstances listed.

Section 3.13, Parking, Loading & Service Areas

- Q. The Board finds that the subdivision as presented provides adequate space for off-street parking for the single family dwellings on each lot.

Section 3.17 Source Protection Areas

- R. The Board finds that this proposed development is outside of the groundwater source protection area.

Section 3.19, Surface Waters & Wetlands

- S. The Board finds that according to the ANR Natural Resources Atlas there are no surface waters or wetlands on the property.

Section 3.22, Water Supply & Wastewater Systems

The Board makes the following findings:

- T. The applicant indicated at the Sketch Plan hearing that both existing septic systems have been permitted, however the permits have not been submitted. A Vermont Agency of Natural Resources and Natural Resources Board Project Review Sheet has not been submitted with the preliminary plans. Submission of an approved Wastewater System and Potable Water Supply Permit and a Project Review Sheet will be considered in fulfillment of this section [Section 3.22(A) and (C)(1), (2)].
- U. The septic systems are already in existence and Section 3.2 (C) (4) & (5) and Sections 3.22(D) are not applicable.

Section 7.2, Subdivision Review, Applicability

The Board makes the following findings:

- V. The proposal qualifies as a subdivision per Section 7.2 (C).

W. The proposed subdivision does not qualify for an exemption under Section 7.2.(D).

Section 7.3, Sketch Plan Review

The Board makes the following finding:

X. The proposed subdivision was classified as a minor subdivision during the sketch plan review on June 3, 2013 per Section 7.3(D)

Section 7.5, Subdivision Review, Preliminary Subdivision Review

The Board makes the following findings:

Y. It was determined at the sketch plan hearing on June 3, 2013 that preliminary subdivision review would not be waived in accordance with Section 7.5(B).

Z. The submission requirements of Section 7.5 (C) were fulfilled, with the exception of a subdivision plat (only a Site Plan was submitted) and a state project review sheet. A subdivision plat prepared by a licensed surveyor must be submitted with the final application.

AA. The hearing requirements of Section 7.5(D) were fulfilled.

BB. This decision is written in fulfillment of Section 7.5(E).

Article VIII Subdivision Standards

The Board makes the following findings:

CC. The applicants have provided responses to applicable sections of Article VIII on the Findings Checklist. This document will be reviewed at the final subdivision hearing [Section 8.1 (C), Sections 8.2 through 8.8].

DD. Regarding Section 8.3(F) the existing lots and structures are located within an area of primary agricultural soils, however they are already in existence.

EE. The applicants have not provided temporary and permanent stormwater management and erosion control measures in accordance with Section 8.5 because there are no proposed changes.

FF. In accordance with Sections 8.6 and 8.8, the applicant has submitted a draft Private Road Agreement that describes the maintenance responsibilities and shared financial responsibilities of the following properties: BT010 and BT012. A few typos

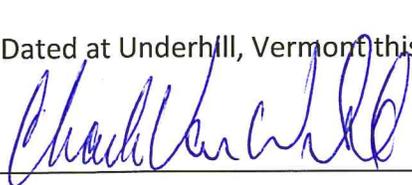
exist in the draft as submitted including: there is an unnecessary "a" at the end of the first line; the second line should read "... for the purpose of of ingress and egress..."; the first "lot owners" in Section (b) should not be plural; the end of the first line in Section (f) should read "...all information necessary to make an informed decision on the matter." and there should be signatory lines and notary space for all four property owners.

IV. DECISION AND PRELIMINARY HEARING REQUIREMENTS

Based upon the findings above, and subject to the supplemental final hearing conditions below, the Development Review Board grants preliminary approval for the subdivision as presented at the preliminary hearing.

- A. A subdivision plat prepared by a licensed surveyor must be submitted with the final application.
- B. A copy of the Vermont Agency of Natural Resources and Natural Resources Board Project Review Sheet shall be submitted with the application for final subdivision review.
- C. A copy of the Wastewater System and Potable Water Supply Permits shall be submitted with the application for final subdivision review.
- D. The Private Road Agreement shall be filed in the land records by the applicants. The opportunity to enter into a new agreement should be extended to interested abutting property owners.
- E. The proposed deed restrictions shall be filed in the land records.

Dated at Underhill, Vermont this 9 day of Dec, 2013.



Charles Van Winkle, Chair, Development Review Board

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceedings before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. §4471 and Rule 5 (b) of the Vermont Rules for Environmental Court Proceedings. Appeal period ends 1/9/2014.